

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Petition of the Embarq Local Operating)	
Companies for Limited Forbearance)	WC Docket No. 08-08
Under 47 U.S.C. § 160(c) from)	
Enforcement of Rule 69.4(a), 47 U.S.C.)	
§ 251(b), and Commission Orders on the)	
ESP Exemption)	

**COMMENTS
of the**

**NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.; NATIONAL
TELECOMMUNICATIONS COOPERATIVE ASSOCIATION;
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL
TELECOMMUNICATIONS COMPANIES; INDEPENDENT TELEPHONE AND
TELECOMMUNICATIONS ALLIANCE; and the EASTERN RURAL
TELECOMMUNICATIONS ASSOCIATION**

February 19, 2008

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I. INTRODUCTION AND SUMMARY

The National Exchange Carrier Association, Inc. (“NECA”), the National Telecommunications Cooperative Association (“NTCA”), the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”), the Independent Telephone and Telecommunications Alliance (“ITTA”), and the Eastern Rural Telecommunications Association (“ERTA”) (the “Associations”) hereby file these comments in support of the Petition for Forbearance filed January 11, 2008 by the Embarq Operating Companies (“Embarq”).¹

¹ The National Exchange Carrier Association, Inc. (NECA) is a non-stock, non-profit association formed in 1983 pursuant to the Commission’s Part 69 access charge rules. *See generally* 47 C.F.R. § 69.600 *et seq.* NECA is responsible for filing interstate access tariffs and administering associated revenue pools on

Embarq's petition asks the Commission to forbear from any application of the ESP exemption to IP-to-PSTN voice traffic.² The Commission's ESP exemption allows Enhanced Service Providers (ESPs) to "use incumbent LEC networks to receive calls from their customers."³ without paying interstate access charges.⁴ As Embarq points out, the ESP exemption has never properly applied to IP-to-PSTN voice calls, but was instead designed for unique applications and special terminals that use the PSTN much differently than carriers do for the provision of ordinary communication services.⁵ Embarq further states that "the ESP exemption covered only the connection between the ESP *and its subscribers*, not between the ESP *and its non-subscribers*"⁶ and was never intended to apply to interexchange voice calls placed to non-subscriber parties on the PSTN.

behalf of over 1200 incumbent local exchange carriers (ILECs) that choose to participate in these arrangements. The National Telecommunications Cooperative Association (NTCA) represents more than 570 rural rate-of-return regulated telecommunications providers. The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) is a national trade association representing over 550 small ILECs serving rural areas of the United States. The Independent Telephone and Telecommunications Alliance (ITTA) is an organization of midsize incumbent local exchange carriers ("ILECs") that collectively serve over ten million access lines in over 40 states and offer a diversified range of services to their customers. Most ITTA member companies qualify as rural telephone companies within the meaning of section 3(37) of the Communications Act of 1934, as amended (the "Act"). 47 U.S.C. § 153(37). The Eastern Rural Telecom Association (ERTA) is a trade association representing approximately 68 rural telephone companies operating in states east of the Mississippi River.

² Petition of the Embarq Local Operating Companies for Limited Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Rule 69.5(a), 47 U.S.C. § 251(b), and Commission Orders on the ESP Exemption (Jan. 11, 2008) (*Embarq Petition*).

³ *Access Charge Reform*, CC Docket No. 96-262, *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, *Transport Rate Structure and Pricing*, CC Docket No. 91-213, *End User Common Line Charges*, CC Docket No. 95-72, First Report and Order, 12 FCC Rcd 15982 (1997), at ¶ 343 (*First Report and Order*).

⁴ The ISP Remand Order, however, requires payment of reciprocal compensation at a rate no higher than \$0.0007 per MOU for ISP bound traffic. Implementation of the Local Competition Provisions in the Telecoms. Act of 1996; Intercarrier Compensation for ISP Bound Traffic, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001) (*ISP Remand Order*).

⁵ *Embarq Petition* at 3.

⁶ *Id.* (emphasis in original).

Yet, Embarq states it has experienced significant increases in interconnected VoIP traffic originating from providers serving large businesses, cable TV phone customers, “over-the-top VoIP” service providers such as Vonage, and other interconnected long distance providers, who wrongfully claim exemption from access charges under the ESP exemption.⁷ Embarq next shows the negative financial impacts this access avoidance behavior has on its operations and ability to invest in new technology. Finally, Embarq explains how its request satisfies the statutory standards for forbearance.⁸

The Associations support the relief requested in Embarq’s petition. Many rural ILECs are facing the same difficulties as Embarq in collecting access charges from service providers who improperly claim the ESP exemption applies to the long distance voice calls they terminate on ILEC networks. In view of the significant burdens placed on Embarq and similarly-situated ILECs as a result of improper claims to the ESP exemption, the Commission should either grant the forbearance relief requested in Embarq’s petition to all ILECs, or promptly issue a declaratory ruling to the effect that the ESP exemption does not apply to interconnected VoIP services.⁹

II. THE ESP EXEMPTION DOES NOT APPLY TO IP-TO-PSTN CALLS

The Associations strongly agree with Embarq’s conclusion that the ESP exemption from access charges does not apply to IP-to-PSTN interexchange traffic. As the Commission itself has explained, the ESP exemption “carves out from the access

⁷ *Id.* at 12.

⁸ *Id.* at 18.

⁹ Section 1.2 of the Commission’s rules permit it to issue a declaratory ruling on its own motion when such action would be useful for “terminating a controversy or removing uncertainty.” 47 C.F.R. § 1.2.

charge obligation when they ‘use incumbent LEC networks to receive calls from their customers.’”¹⁰ The interconnected VoIP providers described in Embarq’s petition, however, clearly use incumbent LEC networks to terminate calls to other carriers’ customers.

In other words, this traffic is *not* ‘ESP-bound,’ but is ‘PSTN-bound’ in the exact same fashion as a traditional telephone call. Similarly, IP-PSTN service providers do not merely ‘use incumbent LEC networks to receive calls from their customers,’ but they use the PSTN to *terminate* calls from their customers to *non*-customers in other exchanges (IP-PSTN traffic), or to receive calls from *non*-customers in other exchanges (PSTN-IP traffic) - just like traditional long-distance telephone calls. In short, the FCC’s limited ESP exemption simply does not apply to these services.¹¹

VoIP providers routinely claim their traffic qualifies as “enhanced” because it undergoes a net protocol conversion (from IP to circuit-switched) over the course of a call.¹² But the ESP exemption does not, and was never intended to, exempt service providers from paying terminating access charges for long distance voice telephone calls simply because those calls originate in one transmission format (*e.g.*, IP) and are then converted to another format (circuit-switched) for delivery to the PSTN.¹³

Interconnected VoIP providers also claim their services qualify as “enhanced” because they provide additional features and functions supposedly not available with

¹⁰ *First Report and Order* at ¶ 343.

¹¹ *Application by Pacific Bell Telephone Company d/b/a SBC California (U 1001 C) for Arbitration of an Interconnection Agreement with MCI Metro Access Transmission Services LLC (U 5253 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996*. Application 05-05-027, Final Arbitrator’s Report (Apr. 19, 2006), at 127, *quoting with approval* SBC-CA’s Opening Brief at 178-79.

¹² *E.g.*, Letter from Kristopher E. Twomey, Regulatory Counsel, CommPartners Holding Corp., to Marlene H. Dortch, FCC, CC Docket No. 01-92 (Dec. 12, 2007), at 1.

¹³ *Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, 19 FCC Rcd 7457 (2004) (*IP-in-the-Middle Order*).

traditional long distance telephony.¹⁴ This assertion is highly questionable; Embarq points out, for example, that its network supports deployment of many of the same features and functions available from VoIP providers, and many other traditional telephone companies have similar offerings.¹⁵

In any event, the availability or non-availability of particular IP-based “bells and whistles” is beside the point -- the Commission itself has recognized that interconnected VoIP services are “increasingly being used as a substitute for traditional telephone service” and in fact are “virtually indistinguishable” from circuit-switched services from a consumer perspective. Based on such findings, the Commission has required interconnected VoIP service providers to comply with a wide panoply of statutory and regulatory requirements applicable to traditional providers.¹⁶ Not once has it declined to impose a public interest regulation on interconnected VoIP services or conclude that those services differ in any material way from traditional voice services in the eyes of consumers.

The fact that consumers perceive interconnected VoIP services to be virtually indistinguishable from, and substitutable for, traditional voice calls, negates claims that

¹⁴ See e.g., VoIP: Why is it not your parents’ Plain Old Telephone Service (POTS), Internet Caucus Advisory Committee, Written Statement by the VON Coalition; Written Statement by Vonage (Mar. 16, 2004), viewed at <http://www.netcaucus.org/events/2004/voip/>. See also, Feature Group IP Petition for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1), and Rule 69.5(b), WC Docket No. 07-256 (Oct. 23, 2007); Level 3 Reply Comments, WC Docket No. 04-36 (July 14, 2004), at 20.

¹⁵ *Embarq Petition* at 10, n. 27.

¹⁶ *Id.* at 26, n. 66. Embarq identified several examples of Commission action treating interconnected VoIP traffic the same as traditional circuit-switched traffic. See *VoIP 911 Order*, 20 FCC Rcd 10245 (applying E911 requirements to interconnected VoIP services); *Communications Assistance to Law Enforcement Act and Broadband Access and Services*, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989 (2006), *aff’d*, *American Council on Educ. v. FCC*, 451 F.3d 226 (D.C. Cir. 2006) (applying CALEA compliance requirements); *USF Contribution Order*, 21 FCC Rcd 7518 (applying universal service support obligations). *Id.*

the ESP exemption applies. When the Eighth Circuit upheld the FCC's retention of the ESP exemption in 1998,¹⁷ it did so based on the conclusion that Information Service Providers (ISPs, a group that includes ESPs), "do not utilize LEC services and facilities in the same way or for the same purposes as other customers who are assessed per-minute interstate access charges."¹⁸

The court continued by explaining the difference as follows:

ISPs subscribe to LEC facilities in order to receive local calls from customers who want to access the ISP's data, which may or may not be stored in computers outside the state in which the call was placed. An IXC, in contrast, uses the LEC facilities as an element in an end-to-end long-distance call that the IXC sells as its product to its own customers.¹⁹

Today's interconnected VoIP providers use LEC facilities as an element in offering end-to-end telephony calling services, and use the PSTN to terminate long-distance calls in the same manner as any other long distance provider. As Embarq has correctly asserted, there is, therefore, no basis under the Commission's rules or the *Southwestern Bell* standard for such providers to claim the benefits of the exemption.

III. THE FCC SHOULD ACT IMMEDIATELY TO CONFIRM THE ESP EXEMPTION DOES NOT APPLY TO INTERCONNECTED VoIP TRAFFIC.

The Commission's apparent reluctance to address the application of access charges to interconnected VoIP calls has created substantial regulatory uncertainty for

¹⁷ BellSouth and Bell Atlantic challenged the Commission's retention of the ESP exemption on the ground that it "constituted an implicit, and discriminatory subsidy in violation of § 254" of the Act. *Southwestern Bell Tel. Co. v. FCC.*, 153 F.3d 523, 541 (8th Cir. 1998) (*Southwestern Bell*).

¹⁸ *Id.* at 542.

¹⁹ *Id.* at n.9

telecommunications providers and their customers. In the past, the Commission has taken firm action to remove such uncertainty. For example, the Commission decisively rejected claims that the addition of menu options to prepaid calling cards somehow transformed these basic services into “enhanced” versions.²⁰ In the Commission’s own words, this decision “leveled the regulatory playing field for calling card providers and reduced regulatory uncertainty, thus encouraging entry and innovation in the market for these services.”²¹

It is time for the Commission to resolve the access charge issue as it applies to the much larger and faster-growing interconnected VoIP market. Embarq states it has experienced an increase in the number of disputes over, and refusals to pay, access charges on interexchange calls terminated on the PSTN that the sending carrier claims are “IP originated.”²² This is consistent with recent experiences of other ILECs, including many of the Associations’ members.²³ By way of example, a small sample of the

²⁰ *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290 (2006).

²¹ *Section 257 Triennial Report to Congress*, Report, 43 Comm. Reg. 489, at ¶3 (2007). See also, *United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband Over Power Line Internet Access Service as an Information Service*, Memorandum Opinion and Order, 21 FCC Rcd 13281 (2006) (removing regulatory uncertainty by classifying broadband over power lines for Internet access as an information service); *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers; and Petition of Z-Tel Communications, Inc. for Temporary Waiver of Commission Rule 61.26(d) to Facilitate Deployment of Competitive Service in Certain Metropolitan Statistical Areas*, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd 9108 (2004) (Statement of Chairman Michael K. Powell) (Today’s Order [that modified regulatory caps on competitive LEC access charges] removes a regulatory quirk that has for too long led carriers into regulatory arbitrage schemes. It represents the culmination of our efforts, begun in 2001, to quiet the financial and regulatory uncertainty for both competitive LECs and inter-exchange carriers (IXCs) in the market for access services. Today, we arrive at our transition to equalized switched access rates by reaffirming our commitment to prevent arbitrage and answer a number of questions that have led to numerous disputes between carriers.).

²² *Embarq Petition* at 27.

²³ See e.g., Letter from Geoffrey A. Feiss, Montana Telecommunications Association, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (Oct. 26, 2007); Texas Statewide Telephone Cooperative *Comments*, WC Docket No. 07-135 (Dec. 17, 2007), at 2, 7; ITTA *Comments*, WC Docket No. 07-135 (Dec. 17, 2007), at 2; WTA *Comments*, WC Docket No. 07-135 (Dec. 17, 2007), at 22; Letter from Joe A. Douglas, NECA, to Kevin J. Martin, Chairman, FCC, CC Docket No. 01-92 (Nov. 13, 2007); Letter from Joe A. Douglas, NECA, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (Oct. 16, 2007); Letter from Joe A. Douglas, NECA, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (July 25, 2007); and Letter from Joe A. Douglas, NECA, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (May 2, 2007).

numerous letters received by rural ILECs from carriers claiming the traffic they have sent for termination is exempt from access charges because the calls are “IP originated” is included as an Appendix to this filing.

There have been, and continue to be, numerous disputes before state PUCs and district courts in which terminating ILECs seek payment from VoIP providers for interexchange traffic sent for termination on the PSTN. In some cases, PUCs and courts have rightly disregarded the specious assertion that the traffic is exempt from access charges because it originated from ESP customers.²⁴ Pointing to the FCC’s own statement in the IP-Enabled Services NPRM that indicates the cost of terminating calls on the PSTN is to be shared equitably among all those sending calls to the PSTN,²⁵ for example, the California PUC threw out Global NAPs’ assertion to this effect, stating:

[T]his response misreads applicable law. The only relevant exemption from the access charge regime under Federal law is for *ISP-bound traffic* rather than *ISP-originated* traffic, a conclusion we reached in our recent *AT&T-MCI metro* decision involving facts very similar to those in this case.”²⁶

²⁴E.g., *Cox California Telecom v. Global NAPS*, Docket No. 06-04-026, Opinion Suspending Registrant’s Certificate of Public Convenience and Necessity, (April 28, 2006); *Global NAPS, Inc. v. Verizon NE, et al*, 505 F.3d 43 (1st Cir. 2007); *Complaint and Request for Emergency Relief of Global NAPS Georgia, Inc. Against Bellsouth Telecommunications, Inc., d/b/a/ AT&T Georgia*, Docket No. 12921-U, Final Order, (GA PUC, Nov. 15, 2007); *Global Naps North Carolina, et al., v. Bellsouth Communications*, Order, (E.D. NC, Sept. 20, 2007).

²⁵ “As a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways.” *IP-Enabled Services*, WC Docket N. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004), at ¶¶ 33, 61.

²⁶*Cox California Telcom, LLC v. Global NAPs California, Inc.*, Docket No. 06-04-026, Opinion Granting Complainant’s Motion for Summary Judgment (Cal. PUC, Jan. 11, 2007), at 5.

Other PUCs and courts have not been so decisive, unfortunately.²⁷ Because of the increase in disputes over access bills on this issue, there is a clear need for the Commission to confirm that access charges apply to all PSTN-terminated interexchange calls regardless of the technology used to originate the call.²⁸ Failure to respond is likely to encourage even more regulatory and courtroom battles over the scope of the ESP exemption— a result that is clearly inconsistent with policies favoring robust investment and innovation, especially in rural markets.

Worse, to the extent that some VoIP providers or their competitive LEC confederates can successfully avoid paying access charges on ordinary voice calls by falsely claiming ESP status, remaining providers that are compliant with access charge requirements have a strong incentive to try similar tactics. Needless to say, should interexchange calling be perceived as fully free of access charges whenever VoIP technology is used, everyone would either use VoIP technology or claim they do so as to avoid paying access charges.

Rural ILECs view these disputes as part of a larger pattern of access avoidance behaviors that include not only phantom traffic but also inaccurate, invalid or

²⁷ See e.g., *Level 3 Communications v. Qwest Corporation*, Docket No. UT-053039, Order Denying in Part, and Granting in Part, Level 3's Motion for Summary Determination; Denying in Part, and Granting in Part, Qwest's Motion for Summary Determination, (Wash. PUC, Aug. 26, 2005); *Frontier Telephone of Rochester v. USA Datanet Corp.*, Decision and Order, (W.D. NY. Aug. 2, 2005); *Southwestern Bell et al. v. VarTec Telecom et al.*, Memorandum and Order, (E.D. MO, Aug. 23, 2005); *Southwestern Bell Telephone et al. v. Global Crossing Ltd. et al.*, Memorandum and Order (E.D. MO, Feb. 7, 2006), E.D. MO; *Southern New England Telephone v. Global NAPS, Inc.*, Ruling on Plaintiff's Motion for Partial Summary Judgment, Defendant's Motion for Partial Summary Judgment, and Defendant's Motion to Supplement Summary Judgment Record (D. Conn., Mar. 26, 2007).

²⁸ The Commission should also make clear that when wholesale transmission providers deliver traffic for termination to the PSTN, they are responsible for payment of access charges. See *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, Memorandum Opinion and Order, 22 FCC Rcd 3513 (2007)

incomplete call signaling information, missing or inaccurate call detail records, inaccurate Percent Interstate Usage (PIU) reports, and improper routing of access traffic over local interconnection facilities. The financial health of rural carriers and their continued ability to provide universal service in rural America is being placed in jeopardy as the volume of such traffic increases. The Commission has recognized the importance of access charge revenues to rural LECs, who generally serve the most remote areas of the nation. Access charges play a vital role in recovering the higher costs of providing and maintaining universal service in these areas, which lack the customer density taken for granted by larger carriers and service providers.²⁹ Rural ILECs are truly “carriers of last resort.” While there may be local competition in various smaller towns, many rural customers live well outside city limits and simply have no other option for communications connections to their community and the world, except from their local LEC. By allowing the ESP exemption issue to fester, the Commission may well put these customers at risk.

Fortunately, the solution is within reach. As discussed in Embarq’s petition and in these comments, the ESP exemption simply does not apply to interconnected VoIP calls terminating on the PSTN. The Commission can significantly assist the industry, state regulators and the courts by promptly responding to Embarq’s petition, either by

²⁹ “[R]ate-of-return carriers are typically small, rural telephone companies concentrated in one area. They generally have higher operating and equipment costs than large, price cap carriers due to lower subscriber density, smaller exchanges, and limited economies of scale.” *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation; and Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001), at ¶288.

granting forbearance as requested or by issuing a declaratory ruling confirming that the ESP exemption does not apply to such traffic.

IV. CONCLUSION

The Associations respectfully request the Commission take immediate action to confirm that all interexchange calls terminated on the PSTN are subject to access charges regardless of how they are originated. It may do so in this proceeding by granting Embarq's request for forbearance, or by issuing a declaratory ruling to this effect in response to Embarq's request or in a separate proceeding. Whichever route is chosen, prompt action will serve the public interest by removing regulatory uncertainty and by placing all interexchange service providers on a level playing field.

February 19, 2008

Teresa Evert
Senior Regulatory Manager

Respectfully submitted,

NATIONAL EXCHANGE CARRIER
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Associations' Comments was served this 19th day of February, 2008 by electronic filing and email to the persons listed below.

By: /s/ Shawn O'Brien
Shawn O'Brien

The following parties were served:

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APPENDIX



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March 27, 2007

Laurel Highland Telephone Company
Po Box 168
Stahlstown, PA 15687

Re: Disputed invoice(s). Please see attached

To Whom It May Concern:

We are in receipt of an invoice for the billing account number ("BAN") referenced above. Please be advised that the billed party, CommPartners, is disputing the invoice. Based on CommPartners records, it appears that 97.5% of the originated traffic is interstate in nature ("PIU"), with 2.5% as local ("PLU"). CommPartners has not delivered any circuit-switched telephone calls to your company during the time period referenced in the invoice. According to CommPartners customer detail records, every call originated by one of our end users and terminated by your company, was initiated as an Internet protocol ("IP") stream, i.e., voice over Internet protocol ("VoIP"). Because all the traffic listed on this invoice represents VoIP transmissions rather than circuit-switched telephone calls, your company is not entitled to collect access charges.

CommPartners understands that this issue is currently the object of much debate at the Federal Communications Commission ("Commission"), specifically in the *IP Enabled Services* docket¹ and the *Intercarrier Compensation reform* docket². In the *AT&T Declaratory Ruling*³, the Commission specifically noted that although AT&T's "IP in the middle" services were subject to access charges, the FCC was not applying this to IP-originated calls. The Commission reserved the right to do so in the future, noting that its decision "in no way precludes the Commission from adopting a fundamentally different approach when it resolves the IP services rulemaking, or when it resolves the *Intercarrier Compensation* proceeding." This specific issue is also the subject of a number of other pending petitions at the Commission. After these proceedings are completed and their results become final and non-appealable, CommPartners will comply with any federal or state requirements to pay access charges. Until that time, however, CommPartners refuses to pay access charges on any interstate IP-originated traffic terminated by your company. As a compromise, CommPartners will agree to pay tariffed local termination rates to your company for the 2.5% PLU traffic.

Should there be any questions or additional information required, please do not hesitate to contact me at 702 367-8647 ext. 1079. Thank you.

Sincerely,

Kristopher E. Twomey
Regulatory Counsel

¹ *In the Matter of IP Enabled Services, Notice of Proposed Rulemaking*, WC Docket No. 04-36 (Released March 10, 2004).

² *In the Matter of Access Charge Reform, Notice of Proposed Rulemaking*, CC Docket No. 96-488.

³ *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges, Order*, WC Docket No. 02-361, FCC 04-97 (April 21, 2004) ("*AT&T Declaratory Ruling*").



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May 25, 2007

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RECEIVED
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Re: Disputed invoice(s). Please see attached

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Regulatory Counsel

¹ *In the Matter of IP Enabled Services, Notice of Proposed Rulemaking*, WC Docket No. 04-36 (Released March 10, 2004).

² *In the Matter of Access Charge Reform, Notice of Proposed Rulemaking*, CC Docket No. 96-488.

³ *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges, Order*, WC Docket No. 02-361, FCC 04-97 (April 21, 2004) ("*AT&T Declaratory Ruling*").



THE IP NETWORK AND VOIP SOLUTIONS PROVIDER

Kristopher E. Twomey
Regulatory Counsel
CommPartners
3291 N. Buffalo Drive, Suite 150
Las Vegas, NV 89129
P: 702.367.8647 ext. 1079
F: 702.365.8647

August 21, 2007

Mid-America Computer Corp
C/O North County Communications / Attn: Angela Edgell
Po Box 700
Blair, NE 68008

Re: Disputed invoice(s). Please see attached

To Whom It May Concern:

We are in receipt of an invoice for the billing account number ("BAN") referenced above. Please be advised that the billed party, CommPartners, is disputing the invoice. Based on CommPartners records, it appears that 90% of the originated traffic is voice over Internet protocol ("VoIP"), with 10% as traditional circuit-switched ("TDM"). According to CommPartners customer detail records, 90% of traffic originated by one of our end users and terminated by your company, was initiated as an Internet protocol ("IP") stream. Because this traffic represents VoIP transmissions rather than circuit-switched telephone calls, your company is not entitled to collect access charges on these calls. CommPartners will pay access charges on the 10% circuit-switched calls.

CommPartners understands that this issue is currently the object of much debate at the Federal Communications Commission ("Commission"), specifically in the *IP Enabled Services* docket¹ and the *Intercarrier Compensation Reform* docket². In the *AT&T Declaratory Ruling*³, the Commission specifically noted that although AT&T's "IP in the middle" services were subject to access charges, the FCC was not applying this to IP-originated calls. The Commission reserved the right to do so in the future, noting that its decision "in no way precludes the Commission from adopting a fundamentally different approach when it resolves the IP services rulemaking, or when it resolves the *Intercarrier Compensation* proceeding." This specific issue is also to be addressed as part of the Missoula Plan proceeding currently pending at the FCC. After these proceedings are completed and their results become final and non-appealable, CommPartners will comply with any federal or state requirements to pay access charges. Until that time, however, CommPartners refuses to pay access charges on any interstate IP-originated traffic terminated by your company.

Should there be any questions or additional information required, please do not hesitate to contact me at 702 367-8647 ext. 1079. Thank you.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kristopher E. Twomey", written in a cursive style.

Kristopher E. Twomey
Regulatory Counsel

¹ *In the Matter of IP Enabled Services, Notice of Proposed Rulemaking*, WC Docket No. 04-36 (Released March 10, 2004).

² *In the Matter of Access Charge Reform, Notice of Proposed Rulemaking*, CC Docket No. 96-488.

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Kristopher E. Twomey
Regulatory Counsel
CommPartners
3291 N. Buffalo Drive, Suite 150
Las Vegas, NV 89129
P: 702.367.8647 ext. 1079
F: 702.365.8647

September 10, 2007

Triangle Telephone
Po Box 1220
2121 Highway 2 NW
Havre, MT 59501

Re: Disputed invoice(s). Please see attached

To Whom It May Concern:

We are in receipt of an invoice for the billing account number ("BAN") referenced above. Please be advised that the billed party, CommPartners, is disputing the invoice. Based on CommPartners records, it appears that 90% of the originated traffic is voice over Internet protocol ("VoIP"), with 10% as traditional circuit-switched ("TDM"). According to CommPartners customer detail records, 90% of traffic originated by one of our end users and terminated by your company, was initiated as an Internet protocol ("IP") stream. Because this traffic represents VoIP transmissions rather than circuit-switched telephone calls, your company is not entitled to collect access charges on these calls. CommPartners will pay access charges on the 10% circuit-switched calls.

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Kristopher E. Twomey
Regulatory Counsel

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THE IP NETWORK AND VOIP SOLUTIONS PROVIDER

November 15, 2007

Calaveras Telephone Company
Attn: Yvonne Smythe
Po Box 37
Copperopolis, CA 95228

Kristopher E. Twomey
Regulatory Counsel
CommPartners
3291 N. Buffalo Drive, Suite 150
Las Vegas, NV 89129
P: 702.367.8647 ext. 1079

Re: Disputed invoice(s). Please see attached

To Whom It May Concern:

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CommPartners understands that this issue is currently the object of much debate at the Federal Communications Commission ("Commission"), specifically in the *IP Enabled Services* docket² and the *Intercarrier Compensation Reform* docket³. In the *AT&T Declaratory Ruling*⁴, the Commission specifically noted that although AT&T's "IP in the middle" services were subject to access charges, the FCC was not applying access charges to IP-originated calls. The Commission reserved the right to do so in the future, noting that its decision "in no way precludes the Commission from adopting a fundamentally different approach when it resolves the IP services rulemaking, or when it resolves the *Intercarrier Compensation* proceeding."

This specific issue will likely be addressed as part of the *Intercarrier Compensation Reform* docket, whether the Missoula Plan is finally adopted, or another plan is chosen. After these proceedings are completed and their results become final and non-appealable, CommPartners will comply with any federal or state requirements to pay switched access charges on VoIP traffic. Until that time, however, CommPartners refuses to pay access charges on any of its IP-originated traffic terminated by your company.

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Sincerely,

Kristopher E. Twomey
Regulatory Counsel

¹ *Vonage v. Minnesota PUC*, 290 F. Supp. 2d 993, 999 (D. Minn.), aff'd, 394 F. 3d 568 (8th Cir. 2004) (VoIP-originated traffic that terminates on PSTN undergoes net protocol conversion and is enhanced under Section 64.702 of Commission's rules); *Access Charge Reform*, 12 FCC Rcd. 15982, 16131-16135 (1997) (exemption applies to originating and terminating traffic), aff'd *Southwestern Bell Telephone Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998).

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THE IP NETWORK AND VOIP SOLUTIONS PROVIDER

November 20, 2007

Sierra Telephone
Po Box 219
Attn: Steve Hayes
Oakhurst, CA 93644

Kristopher E. Twomey
Regulatory Counsel
CommPartners
3291 N. Buffalo Drive, Suite 150
Las Vegas, NV 89129
P: 702.367.8647 ext. 1079

Re: Disputed invoice(s). Please see attached

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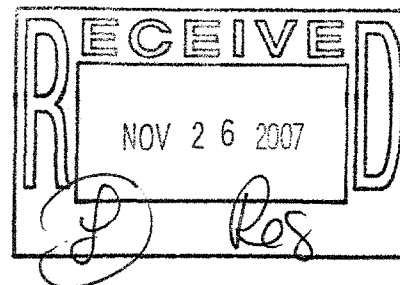
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Sincerely,

Kristopher E. Twomey
Regulatory Counsel



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THE IP NETWORK AND VOIP SOLUTIONS PROVIDER

January 22, 2008

Plains Telephone
Po Box 123
6488 US Highway 36
Joes, CO 80822

Kristopher E. Twomey
Regulatory Counsel
CommPartners
3291 N. Buffalo Drive, Suite 150
Las Vegas, NV 89129
P: 702.367.8647 ext. 1079

Re: Disputed invoice(s). Please see attached

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Should there be any questions or additional information required, please do not hesitate to contact me at 702 367-8647 ext. 1079. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristopher E. Twomey". The signature is fluid and cursive, with the first name being the most prominent.

Kristopher E. Twomey
Regulatory Counsel

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February 20, 2007

VIA Email

Consolidated Communications
Joanie Ferrance
Manager, Carrier Relations

RE: BAN 210 976-7CM3 767

Ms. Ferrance,

This letter is in reference to the above-mentioned dispute between Grande and the above referenced company. Attached you will find a certification statement from Scott Ferguson, Grande Communications COO, concerning the type of traffic in dispute.

If you have any questions please feel free to contact myself at 512.878.5424 or via email at kristene.stark@corp.grandecom.com. Of course you may also contact Tamra Dubose, Direct Cost Manager at 512.878.5439 or via email at tamra.dubose@corp.grandecom.com.

Sincerely,

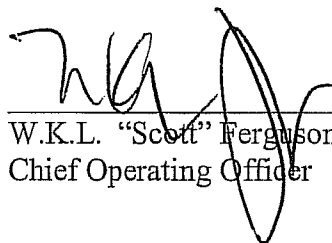
Kristene Stark
Sr. Regulatory Analyst



To Whom It May Concern:

Grande is disputing Switched Access Charges from your company. Grande has verified the minutes of use being assessed these charges are indeed VOIP traffic. I have verified the below statement previously sent to you via email to be true.

This is VOIP traffic, not subject to compensation under either a tariff or the terms of an interconnection agreement and is therefore disputed. As you may be aware the issue involved in this dispute are now pending at the FCC. All usage is being disputed. Grande's customers have certified that the traffic they are sending is VOIP traffic.



W.K.L. "Scott" Ferguson, Jr.
Chief Operating Officer

EARLY, LENNON, CROCKER & BARTOSIEWICZ, P.L.C.

ATTORNEYS AT LAW
900 COMERICA BUILDING
KALAMAZOO, MICHIGAN 49007-4752
TELEPHONE (269) 381-8844
FACSIMILE (269) 381-8822

GEORGE H. LENNON
DAVID G. CROCKER
MICHAEL D. O'CONNOR
HAROLD E. FISCHER, JR.
LAWRENCE M. BRENTON
GORDON C. MILLER
GARY P. BARTOSIEWICZ
BLAKE D. CROCKER

ROBERT M. TAYLOR
RON W. KIMBREL
PATRICK D. CROCKER
THOMAS A. BIRKHOOD
RUSSELL B. BAUGH
ANDREW J. VORBRICH
TYREN R. CUDNEY

OF COUNSEL
JOHN T. PETERS, JR.
THOMPSON BENNETT
(1912 - 2004)
VINCENT T. EARLY
(1922 - 2001)
JOSEPH J. BURGIE
(1926 - 1992)

November 29, 2007

Tami Smith
CABS Billing Operations Analyst III
Consolidated Communications
121 S. 17th Street
Mattoon, IL 61830

RE: IBFA Acquisition Company, LLC
BAN 207 2CLC DM 3571
BAN 2109 CLC DM 3

Dear Ms. Smith:

We are the attorneys for IBFA Acquisition Company, LLC. ("IBFA"). We are in receipt of the e-mail dated November 27, 2007 concerning the account numbers referenced above. IBFA hereby disputes all the invoices identified therein.

100% of the traffic at issue is voice over Internet protocol ("VoIP"). Because this traffic represents VoIP transmissions, rather than traditional circuit-switched telephone calls, your company is not entitled to collect access charges on these calls.

IBFA understands that this issue is currently the object of much debate at the Federal Communications Commission ("Commission"), specifically in the *IP Enabled Services* docket¹ and the *Intercarrier Compensation Reform* docket². In the *AT&T Declaratory Ruling*³, the Commission specifically noted that although AT&T's "IP in the middle" services were subject to access charges, the FCC was not applying this to IP-originated calls. The Commission reserved the right to do so in the future, noting that its decision "in no way precludes the Commission from adopting a fundamentally different approach when it resolves the IP services rulemaking, or when it resolves the *Intercarrier Compensation* proceeding." This specific issue is also to be

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EARLY, LENNON, CROCKER & BARTOSIEWICZ, P.L.C.

Consolidated Communications
November 29, 2007
Page 2

addressed as part of the Missoula Plan proceeding currently pending at the Commission. After these proceedings are completed and their results become final and non-appealable, IBFA will comply with any federal or state requirements to pay access charges. Until that time, however, IBFA refuses to pay access charges on any IP-originated traffic terminated by your company.

Notwithstanding the foregoing, IBFA hereby requests that you enter into negotiations pursuant to 47 USC 251 and 252 to enter into an Interconnection and Reciprocal Compensation Agreement to cover VoIP traffic exchanged between IBFA and Consolidated Communications.

Very truly yours,



EARLY, LENNON, CROCKER & BARTOSIEWICZ, P.L.C.

Patrick D. Crocker
PDC/tld

From: Ketchum, Michael [mailto:MKetchum@OneCommunications.com]
Sent: Tuesday, November 13, 2007 10:09 PM
To: telco@hancock.net
Cc: Simaitis, Susan
Subject: VOIP Dispute - Hancock

David,

In accordance with certain FCC decisions, information services providers (ISPs) are exempted from the payment of access charges when calls are originated in IP format. Instead of being subject to access charges, ISPs "are charged pursuant to the same rules that apply to local end users and are exempt from access . . . charges, even though the calls they send and receive generally travel outside the local service area." *See Developing a Unified Inter-carrier Compensation Regime*, 20 FCC Rcd 4685 (2005); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 16 FCC Rcd 9151 (2001); *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 3 FCC Rcd 2631 (1988); *MTS and WATS Market Structure*, 97 FCC 2d 682 (1983). Thus, when a VOIP provider hands off a call to One Communications that was placed by one of the VOIP provider's customers, One Communications may terminate the call to another LEC without that call being subject to access charges, regardless of where the VOIP provider's customer may be located. This view of the law, and applicability of the FCC's ISP access charge exemption to VOIP services, was confirmed by a federal court last year in *Southwestern Bell Tel., L.P. v. Missouri Pub. Serv. Comm'n*, 461 F. Supp. 2d 1055 (E.D. Mo. 2006).

Mike

Michael Ketchum
Network Cost Manager
One Communications
100 Chestnut Street, Suite 700
Rochester, NY, 14604
Phone: 585-697-1592
Fax: 585-325-5838

-----Original Message-----

From: Simaitis, Susan [mailto:ssimaitis@OneCommunications.com]

Sent: Monday, October 22, 2007 4:57 PM

To: celestej@midtel.net

Subject: VOIPTRAFFICDISPUTE

To Whom It May Concern:

One Communications is disputing the [interstate and](#) intrastate usage charges under [Middleburgh](#), ban no. [I 518592110105](#) , invoice [MTC 5921D0NY7 244](#) .

Our internal traffic reports show that a portion of the minutes are voip traffic, which would be considered local traffic. Since we do not currently have an ICA in place for this traffic, it is considered Bill and Keep therefore One Communications would not have to pay for voip usage.

For your reference, I have included an analysis of the outstanding balances. I have processed a payment of \$ [591.50](#) which would represent the correct amount of traffic on invoices once the voip traffic is removed. Once this payment has been made, I would expect to see a credit on the invoices for the remaining \$ [2723.81](#) .

The issue would have to be corrected going forward.

Do you agree with this settlement?

Susan Simaitis
Network Cost Analyst
P-585-697-2172
Fax 585-325-5838
ssimaitis@onecommunications.com